

# **EXHIBIT H**

# EXHIBIT 33

FILED UNDER SEAL

ATTORNEYS' EYES ONLY

Page 1

1                   UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF WASHINGTON  
3                   AT SEATTLE

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5  
6       IN RE:    )  
7    ) Case No.  
8       VALVE ANTITRUST LITIGATION                              ) 2:21-cv-00563-JCC  
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VIDEOTAPED 30(B)(6) DEPOSITION UPON ORAL EXAMINATION OF  
VALVE CORPORATION  
DJ POWERS

9:00 A.M.

SEPTEMBER 29, 2023

WILSON SONSINI

701 FIFTH AVENUE

SUITE 5100

SEATTLE, WASHINGTON

(CONTAINS CONFIDENTIAL TESTIMONY SUBJECT TO PROTECTIVE  
ORDER FOR ATTORNEYS' EYES ONLY)

REPORTED BY: JUDY BONICELLI, RPR, CCR 2322, CA 9091

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1 publishers, does Valve look at where -- at what price  
2 the game is being sold in other stores?

3 A. No.

4 Q. It does not?

5 A. No.

6 Q. Okay. With respect to the refund policy, is  
7 there a time limit on how long someone is allowed to  
8 play the game before they're not allowed a refund any  
9 more?

10 A. Yes.

11 Q. What's that time limit?

12 A. Two hours.

13 Q. So if they purchase a game and they don't play  
14 the game, is there a time limit before they can get a  
15 refund?

16 A. If they purchase the game and don't play the  
17 game? Yes, there's two weeks.

18 Q. Two weeks. Okay. So it's pretty common for  
19 people on Steam to have a library of games that they  
20 might have purchased but not necessarily played; is  
21 that right?

22 A. Yeah.

23 Q. So they either have a limit of playing it for  
24 two hours as recorded by Steam itself; is that right?

25 A. Yes.

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1           Q. Or the alternative is two weeks of time that  
2 they have had it in their library?

3           A. Yes.

4           Q. And am I correct that Valve's policy is that  
5 publishers can offer discounts elsewhere for games but  
6 then have to run a similar discount in roughly the same  
7 timeframe on Steam?

8           A. Yeah, our policy is not exactly that. Our  
9 policy -- well, I don't know if you have the -- it's  
10 written down in the Steam key documentation. If you  
11 have it, I can read it to you.

12          Q. But is that generally your understanding, that  
13 if someone runs -- if a publisher runs a discount on  
14 their game on a different store, that roughly the same  
15 discount in roughly the same time period has to be run  
16 on Steam itself?

17          A. I'd like to be as specific as possible since  
18 it's important. So if you have the Steam key  
19 documentation, I could read it back to you.

20          Q. Well, I'm actually trying to understand about  
21 Valve's actual practices.

22          A. Okay.

23          Q. And my question is, is it Valve's practice of  
24 telling publishers or discussing with publishers that  
25 if they run a discount on other stores or elsewhere,

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1       that they need to run roughly the same discount in  
2       roughly the same time period on Steam?

3           A. Our policy is that we would like publishers to  
4       offer customers a fair deal, a similar deal to other  
5       platforms. I'd love to have the exact words to read to  
6       you, but.

7           Q. We'll go through several documents today.

8           A. Great.

9           Q. But a "fair deal," let's talk about what you  
10      mean by that.

11       A. Sure.

12       Q. What is a fair deal when you use that  
13      terminology here?

14       A. It's offering customers the same value. A  
15      product for the same price, same value as other  
16      platforms. Similar price, similar value.

17       Q. Do you think that Steam offers -- as a  
18      platform, offers unique value to users, to gamers?

19       A. Yeah.

20       Q. So unique benefits to the Steam platform in  
21      your personal view?

22       A. To the platform, yes.

23       Q. Are there reasons why Steam users might be  
24      willing to pay a higher price on Steam for the same  
25      game?

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1 A. Not really.

2 Q. Now, when it comes to pricing of games on  
3 Steam, Valve actually insists that publishers price the  
4 game roughly the same on Steam and elsewhere,  
5 regardless of whether they're selling Steam key  
6 versions of the game; is that right?

7 A. Can you say that again?

8 Q. Yes. When it comes to pricing of games on  
9 Steam, Valve actually requires publishers to price  
10 their game the same across different types of stores or  
11 platforms, regardless of whether they're selling Steam  
12 keys -- Steam key versions on other stores?

13 A. No.

14 (Exhibit 55 marked for identification.)

15 BY MR. WOLFSON:

16 Q. All right. Mr. Powers, you've been handed  
17 what's been marked as Exhibit 55, and this bears Bates  
18 Valve\_ANT\_0598921 and continues through 8925. I'm  
19 actually going to ask you various things about this  
20 email, so feel free to take a read-through.

21 A. Okay.

Q. So you've read the email chain?

23 A. Yes.

24 Q. Okay, was this one of the emails that you  
25 reviewed in preparation for your testimony today?

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1           A. No.

2           Q. Now, to level set here, this refers to Humble  
3         Bundle, and I don't know if you testified about this  
4         yesterday, but to your understanding, what is Humble  
5         Bundle when it comes to PC games?

6           A. Humble Bundle is a company that offers PC  
7         games bundled up so you can buy ten games at once.

8           Q. And often what happens with Humble Bundle is  
9         that they will have different pricing levels. You pay  
10        what you want. Is that fair?

11          A. They've had various ways of selling bundles,  
12        but yeah, that is one.

13          Q. Okay. And when there is a model or an offer  
14        for Humble Bundle, you pay a certain amount. If it's  
15        above average for that sale, you can get more games or  
16        more benefits from the sale; is that right?

17          A. That's one of the models they use, yeah.

18          Q. And in other models that they've used, they'll  
19        just sell a bundle of games for a set price; is that  
20        right?

21          A. Yes.

22          Q. Now, sometimes they'll do it for, say, for  
23        example, charity events to raise money for charities;  
24        is that right?

25          A. I don't know. I think part of their business

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1 model is to send money to charities, but I don't know  
2 the details.

3 Q. Okay. Now, here, what's happening is  
4 Mr. Giardino is explaining -- well, is explaining  
5 Valve's policies to a company called [REDACTED] that is  
6 trying to sell its game both on Steam and in Humble  
7 Bundle, right?

8 A. Yes.

9 Q. Okay. And what happened is they, based on  
10 this email chain, is that he was refusing to grant  
11 Steam keys to this company because, according to him,  
12 the game was being sold for less as part of the Humble  
13 Bundle than on Steam. Is that your understanding?

14 A. Yes.

15 Q. Now, I asked you before that if the company  
16 was selling a game for less, even if it was not using  
17 Steam keys for that, it's Valve's policy to disallow  
18 that company from selling on Steam if they sold it for  
19 less elsewhere, and your testimony was no, that's not  
20 Valve's policy. Do you recall that?

21 A. Yes.

22 Q. Now, if you look at page 923. It's the, I  
23 want to say, third page in the email chain.

24 A. Yep.

25 Q. An email from Mr. Giardino, Monday, May 22nd,

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1 A. I would assume.

2 Q. Okay. And Uplay was also a platform?

3 A. Uplay is a platform.

4 Q. And a platform kind of like Steam where you  
5 can keep libraries of games, keep track of  
6 achievements, et cetera?

7 A. Yes.

8 Q. Okay. And so here he also mentions Uplay  
9 keys, right?

10 A. Yes.

11 Q. So your understanding is that's also similar  
12 to Steam keys but for the Uplay platform?

13 A. Yeah, I would assume so.

[REDACTED]

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1 A. No.

2 Q. Great, thank you.

3 Now, are you -- when Valve makes Steam key  
4 sales or when a customer purchases a game with Steam  
5 key, what sort of information is Valve able to obtain  
6 from that purchase or activation?

7 MR. CASPER: I object to the question as  
8 being beyond the scope of the designation. We have  
9 designated another witness for Steam keys, not  
10 Mr. Powers.

11 BY MR. WOLFSON:

12 Q. Okay, do you know in your personal capacity?

13 MR. CASPER: His personal deposition was  
14 yesterday, not today. That's over. So he's here to  
15 testify on 30(b)(6) issues today, and that's not one of  
16 them.

17 MR. WOLFSON: Well, I think this is  
18 relevant to one of his topics, and I can be even more  
19 specific.

20 BY MR. WOLFSON:

21 Q. Does Valve monitor data collected from the  
22 Steam key process to monitor the prices at which  
23 publishers are selling games on other stores?

24 A. I'm not sure I understand the question you're  
25 asking.

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1           Q. When determining whether a publisher is  
2 selling a game for less elsewhere than it sells on  
3 Steam, does Valve use data that it collects from Steam  
4 key activations?

5           A. No.

6           Q. Okay. Does Valve help justify its policies  
7 with respect to parity by using data collected from  
8 Steam keys?

9           MR. CASPER: I object to the form of the  
10 question.

11           THE WITNESS: What kind of parity are  
12 you talking about?

13 BY MR. WOLFSON:

14           Q. Content, price.

15           A. We don't have a price parity policy.

16           Q. Do you have a content parity policy?

17           A. In the SDA, yes.

18           Q. And do you have a policy that if someone sells  
19 a product for less elsewhere that Valve will often not  
20 promote the game or stop selling them altogether?

21           A. The policy is that we ask for a fair deal for  
22 customers on other platforms. Or on Steam, relative to  
23 games.

24           Q. What about a practice? Let's not go with the  
25 official term "policy," but is there a practice at

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1 valve of often opting not to promote games or stop  
2 selling them altogether if they're sold for less  
3 elsewhere?

4 A. In the rare occurrences where we're made aware  
5 that the game is being sold on another platform for a  
6 lower price, our practice is to have a conversation  
7 with the publisher.

8 Q. And to literally opt not to promote the game  
9 or to stop selling it altogether?

10 MR. CASPER: Object to the form of the  
11 question.

12 THE WITNESS: Our practice is to have a  
13 conversation with the developer.

14 BY MR. WOLFSON:

15 Q. And use the threat of not promoting them or  
16 stop selling it altogether to get them to either raise  
17 the price elsewhere or lower the price on Steam, right?

18 A. Our practice is to have a conversation with  
19 the developer to understand why the price is lower  
20 elsewhere and see if we can figure out a way to get  
21 Steam's price to a similar price that it is on other  
22 platforms.

23 Q. And if they refuse to lower the Steam price?

24 A. If we get to a situation -- again, this is  
25 rare. If we get to a situation where a partner is

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1 telling us that the price needs to be lower on other  
2 platforms than it is on Steam, then we will typically  
3 choose not to run curated marketing during times where  
4 that game is being discounted, if that is where the  
5 price is lower, or around a launch if it's a around --  
6 if it's a price at launch time.

7 Q. And you said the "rare instance." The reason  
8 that's rare is because usually what happens is the  
9 publisher gets in line, right?

10 A. No, it's rare because we have tens of  
11 thousands of games on Steam. Publishers set their own  
12 prices on Steam. We just don't run into the issue very  
13 often.

14 Q. But it happens often enough that there are  
15 folks within Steam -- including Mr. Peterson,  
16 Mr. Giardino, Ms. Carroll -- who do deal with that and  
17 have these conversations, as you've termed it, with the  
18 publishers.

19 A. When it comes up we have a conversation with  
20 the developer, yeah.

21 Q. And this is not only for small companies but  
22 some of the biggest companies that make video games,  
23 right?

24 A. We treat all partners equally so if we come  
25 across this problem where there is a customer

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1 disadvantage on Steam, then we're going to have a  
2 conversation with the partner.

3 Q. Okay. And just to make sure I'm  
4 understanding, Valve often opts not to promote a game  
5 or to stop selling it altogether if they're being sold  
6 elsewhere for a lower price, right?

7 A. Again, in the rare instance where we  
8 actually -- we have that conversation I'm describing,  
9 so the cadence of events is we are made aware of a  
10 situation where a price is lower elsewhere. In a  
11 significant way, not real close. We have a partner  
12 conversation, try to understand the issue, try to see  
13 if we can figure out a way to get Steam to a price that  
14 is similar to those other platforms.

15 If that conversation ends up in a place, which  
16 is even rarer still, but where the partner says that  
17 the price needs to be lower on these other platforms,  
18 for whatever their reasons are, our next step is  
19 typically not to run curated marketing because we don't  
20 want to lead customers into a bad decision.

21 Q. But Valve will literally tell developers, "If  
22 you don't get in line, we will not promote your game,"  
23 or remove you altogether from Steam?

24 A. That is not our normal practice.

25 Q. Normal practice? How did you determine what

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1      is your normal practice?

2           A. The way I interact with my partners and the  
3 way most Steam employees interact with their partners  
4 that I've -- any conversation that I've been a part of  
5 or most conversations I've been a part of, that is not  
6 the case. You've shown me an email where words like  
7 that have been said, so that's why I clarified.

8 Q. I've shown you multiple emails where words  
9 like that have been said, right?

10 A. I have three.

11 | (Reporter clarification.)

12 MR. CASPER: I don't believe there is a  
13 question pending.

14 BY MR. WOLFSON:

15 Q. And yesterday you -- in your personal  
16 deposition, you were also shown multiple emails where  
17 words like that were used, right?

18 MR. CASPER: Object to the form of the  
19 question.

20 THE WITNESS: Yeah, I don't recall how  
21 many emails I saw yesterday.

22 BY MR. WOLFSON:

23 Q. Multiple emails where you, yourself, were one  
24 of the authors or recipients of emails telling  
25 customers -- I'm sorry, partners about the requirements

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1 of pricing on Steam versus elsewhere, right?

2 A. Emails having conversations about a price that  
3 is lower elsewhere and trying to understand why that's  
4 the case.

5 Q. Okay. And part of these conversations is  
6 saying, hey, we're not going to offer you curated  
7 promotions if you keep doing that, right?

8 A. Part of our approach, if we get to a situation  
9 where we can't have pricing that is fair for Steam  
10 customers is not to amplify marketing with curated  
11 markets.

12 Q. But these conversations, as you know, also  
13 involve the threat not to keep the game on the Steam  
14 store at all; is that right?

15 A. That is not our typical process.

16 Q. All right.

17 (Exhibit 57 marked for identification.)

18 BY MR. WOLFSON:

19 Q. Mr. Powers, I've handed you a document  
20 bearing Bates -- it's marked Exhibit 57, bearing Bates  
21 Valve\_ANT\_0605087 extending through 5089. Feel free to  
22 take a review if you want.

23 A. Okay.

24 Q. Okay. So top level email on this,

25 Mr. Giardino says to a publisher, [REDACTED]

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